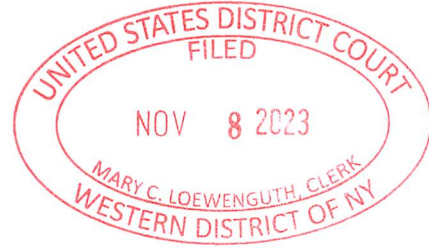


UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MARK BENNETT,

Plaintiff,

v.

17-CV-1330 (JLS) (HKS)

TDY INDUSTRIES, LLC,

Defendant/

Fourth-Party Plaintiff,

and

ALLEGHENY TECHNOLOGIES, INC.,

Defendant/

Third-Party Plaintiff,

v.

STROM ENGINEERING  
CORPORATION,

Third-Party Defendant/

Fourth-Party Defendant.

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### **DECISION AND ORDER**

Plaintiff Mark Bennett commenced an action in Supreme Court, Erie County on December 1, 2017 asserting claims against Allegheny Technologies, Inc. ("ATI") for negligence under New York law in connection with injuries he allegedly sustained from a workplace accident. Dkt. 1-2 at 4-6.<sup>1</sup> ATI removed the action on December 26, 2017. Dkt. 1. On January 3, 2018, United States District Judge Lawrence J. Vilardo

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<sup>1</sup> Unless otherwise noted, page references are to the numbering automatically generated by CM/ECF, which appears in the header of each page.

referred the case to United States Magistrate Judge H. Kenneth Schroeder, Jr. for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 6.<sup>2</sup>

On January 16, 2017, ATI filed a third-party complaint against Strom Engineering Corporation (“Strom”). Dkt. 8. On April 28, 2020, Plaintiff filed an Amended Complaint adding TDY Industries, LLC (“TDY”) as a defendant. Dkt. 46. Plaintiff then filed a Second Amended Complaint on June 10, 2020. Dkt. 53. The next day, TDY filed a fourth-party complaint against Strom. Dkt. 54.

On October 14, 2021, ATI and TDY moved for summary judgment. Dkt. 73. Strom moved for summary judgment on October 15, 2021. Dkt. 75. Also on October 15, 2021, Plaintiff filed a motion to strike seeking to preclude ATI, TDY and Strom from asserting affirmative defenses based on Plaintiff’s receipt of workers’ compensation benefits. Dkt. 76. The parties then briefed these motions. *See* Dkt. 78-80.

On September 7, 2024, Judge Schroeder issued a Report, Recommendation and Order (“R&R”) denying Plaintiff’s [76] motion to strike and recommending that this Court deny the [73] and [75] motions for summary judgment. Dkt. 88. On October 4, 2023, ATI and TDY objected to the R&R. Dkt. 91. They argue that (1) Plaintiff’s claims against ATI and TDY are barred because TDY was a “special employer” of Plaintiff; and (2) claims against ATI should not proceed because ATI was separate and distinct from TDY and, therefore, ATI is not liable for any alleged acts or omissions of TDY. *Id.*

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<sup>2</sup> The case was transferred to the undersigned on February 18, 2020. Dkt. 44.

On October 5, 2023, Strom objected to the R&R, arguing that “ATI and TDY were both Plaintiff’s special employer at the time of his accident and, therefore Plaintiff’s sole remedy is under the Workers’ Compensation Law of New York.” Dkt. 93 at 7. Strom further argues that “the conditions for indemnity and contribution have not been met as a matter of law.” *Id.* at 7. ATI and TDY responded to Strom’s objections, Dkt. 95, but Strom did not file a reply.

Plaintiff responded to both sets of objections, Dkt. 96, and ATI and TDY replied. Dkt. 97. Strom did not reply to Plaintiff’s response. The deadlines for briefing on the objections have now passed. *See* Dkt. 92, 94.

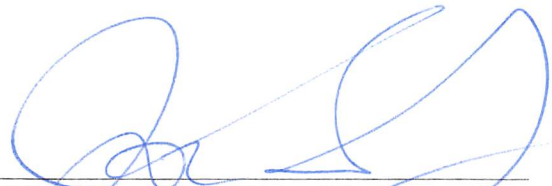
A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R, the objections briefing, and the relevant record. Based on its *de novo* review, the Court accepts and adopts Judge Schroeder’s recommendation.

For the reasons stated above and in the R&R, this Court DENIES ATI and TDY's [73] motion for summary judgment, and further DENIES Strom's [75] motion for summary judgment.

SO ORDERED.

Dated: November 8, 2023  
Buffalo, New York

  
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JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE